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MONTANA LEGISLATIVE HISTORY

Chapter N/A 19 83

Bill H _____ S 368 Original bill & history ✓ C

H. Committee on _____			S. Committee on Natural Res		
Hearing Date(s)	_____	___C	Hearing Date(s)	2-11	✓ C
	_____	___C		2-18	✓ C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SB 364 -- NORMAN -- TO CLARIFY THAT THE COUNTY COMMISSIONERS OF A COUNTY MAY EMPLOY AN ATTORNEY TO PERFORM ANY LEGAL SERVICE IN CONNECTION WITH THE CIVIL BUSINESS OF THE COUNTY WITHOUT THE CONSENT OR INVOLVEMENT OF THE COUNTY ATTORNEY ....

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 02/05/83
HEARING: 2/10/83
REPORT: 02/17/83, DO NOT PASS. REPORT ADOPTED.
BILL KILLED.

SB 365 -- GOODOVER -- TO GENERALLY REALLOCATE COAL SEVERANCE TAX MONEY; ... AND PROVIDING AN EFFECTIVE DATE.

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON TAXATION: 02/05/83
DIED IN COMMITTEE

SB 366 -- CRIPPEN, FABREGA, NORMAN, ET AL. -- REQUIRING AN OWNER OF MORE THAN ONE MOTOR VEHICLE TO CARRY UNINSURED MOTORIST COVERAGE ON EACH VEHICLE OWNED AND OCCUPIED BEFORE BEING ELIGIBLE FOR UNINSURED MOTORIST BENEFITS ARISING OUT OF ACCIDENTS INVOLVING SUCH MOTOR VEHICLES ....

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/05/83
HEARING: 2/10/83
DIED IN COMMITTEE

SB 367 -- MARBUT -- TO REVISE THE METHOD FOR FUNDING LOCAL PUBLIC LIBRARIES; ... AND PROVIDING AN EFFECTIVE DATE.

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 02/05/83
HEARING: 2/8/83
DIED IN COMMITTEE

SB 368 -- LEE, KOLSTAD, SWITZER, ET AL. -- TO CLARIFY THAT THE MONTANA ENVIRONMENTAL POLICY ACT DOES NOT EXPAND AGENCY DECISIONMAKING AUTHORITY OR CREATE ANY RIGHT OF ACTION BEYOND ONE TO REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT ....

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/05/83
HEARING: 2/11/83
REPORT: 02/18/83, DO PASS, AS AMENDED
2ND READING: 02/21/83, DO PASS AYES: 17; NAYS: 32. FAILED.
2ND READING: 2/21/83 BE INDEFINITELY POSTPONED AYES: 34; NAYS: 15
BILL KILLED.

SB 369 -- GRAHAM, HOLLIDAY -- TO DELETE THE REQUIREMENT THAT ADDITIONAL STRIP- AND UNDERGROUND-MINING PERMITS MAY NOT BE ISSUED TO AN OPERATOR WHO HAS REPEATEDLY VIOLATED STATE RECLAMATION LAWS ....

INTRODUCED: 02/05/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/05/83
HEARING: 02/11/83
REPORT: 02/12/83, DO PASS
2ND READING: 02/15/83 AYES: 49; NAYS: 0
3RD READING: 02/17/83 AYES: 50; NAYS: 0

Senate BILL NO. 368

INTRODUCED BY Cec Koehnke Swimmer Keating
ARLESTAD Graham O'Hara Hirsch
Rick Bayles

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT THE MONTANA ENVIRONMENTAL POLICY ACT DOES NOT EXPAND AGENCY DECISIONMAKING AUTHORITY OR CREATE ANY RIGHT OF ACTION BEYOND ONE TO REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT; AMENDING SECTION 75-1-105, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-1-105, MCA, is amended to read:

"75-1-105. Policies and goals supplementary. (1) The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

(2) However, nothing in this chapter creates any right of action beyond one to require an environmental impact statement or expands the decisionmaking authority granted by the existing authorizations referred to in subsection (1)."

-End-

INTRODUCED BILL
SB 368

48TH LEGISLATIVE SESSION

COMMITTEE ON SENATE NATURAL RESOURCES (P.2)

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 350	2-03-83	2-09-83	2-14-83	2-14-83					
SB 356	2-04-83	2-09-83	2-14-83			2-14-83			
SB 362	2-04-83	2-11-83	2-18-83			2-18-83			
SB 368	2-05-83	2-11-83	2-18-83			2-18-83			
SB 369	2-05-83	2-11-83	2-11-83	2-11-83					
SB 396	2-11-83	2-16-83	2-18-83	(Pass Consideration)					
SB 400	2-11-83	2-16-83	2-18-83	2-18-83					
SB 406	2-12-83	2-18-83	2-18-83		2-18-83				
SB 416	2-15-83	2-18-83	2-18-83		2-18-83				
SB 430	2-15-83	2-18-83	2-18-83			2-18-83			
SB 441	2-16-83	2-18-83	2-18-83			2-18-83			
SB 442	2-16-83	2-18-83	2-18-83		2-18-83				
SB 444	2-16-83	2-18-83	2-18-83	(Be Tabled)					

Use a separate sheet for Senate, House Bills, and Resolutions.

48TH LEGISLATIVE SESSION

MINUTES OF
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

February 11, 1983

A regularly scheduled meeting of the Senate Natural Resources Committee was called to order by Senator Harold L. Dover, Chairman, on Friday, February 11, 1983 at 12:30 p.m. in Room 405, State Capitol, Helena, MT.

ROLL CALL: Roll was called, all members of the committee being present.

SENATE BILL 369: Chairman Dover opened hearing and called on Senator Carroll Graham, Dist. 29, sponsor. Senator Graham said in 1979 the legislature had amended the reclamation act, however there was language left in that this bill will remove as it could prohibit operators from receiving another permit. There have been no actions filed for violation, however the possibility is there. The Dept. of State Lands is present to speak on the bill.

PROPONENTS: Dennis Hemmer, Dept. of State Lands spoke in favor of the bill, as the language contained in it will be more specific and easier to interpret and enforce relating to strip and underground mining operation violations. His testimony is attached, Ex. '1'.

James Mockler, Montana Coal Council, stated every operator has had a possible minor violation, however it doesn't mean that they are bad operators. Changing the language would protect those operators. Witness sheet attached, Ex. '2'.

Kenneth L. Williams, Western Energy Company said they would like to see the bill adopted to remove redundant and unnecessary language, his testimony is attached, Exhibit '3'.

OPPONENTS: There were no opponents to the bill.

Senator Eck inquired if this bill pertained to oil and gas operators. It was answered it applies to coal mining.

ACTION ON SENATE BILL 369: Senator Story moved that Senate Bill 369 Do Pass, all voted aye and motion carried.

SENATE BILL 368: An act to clarify the Montana Environmental Policy Act. Chairman Dover opened hearing by calling on Senator Gary Lee, sponsor, District 17. Senator Lee stated questions have arisen as to whether the act is substantive or procedural, and particularly since Judge Bennett ruled that portions of the act are substantive. Since MEPA was

(SB 368, cont.)
enacted from an administrative point of view it has been procedural. There is also a resolution which will address this point. He is requesting that for the next two years to maintain the program that it be considered procedural, and that the Environmental Quality Council be requested to study MEPA during the interim and come back to the 49th Session with a definition as to how it should be considered. The EQC has committed the staff and subcommittees to study other important issues, such as alternate energy, hard rock mining, environmental regulations and the economy, however this should be added. When MEPA first came about, there was much heated discussion, and he suggests that it remain procedural until the EQC has time to hold public hearings and to study the information. Senator Lee stated he would ask John North of the Governors office to speak on the bill.

PROPONENTS: John North, Governor's office, stated he is speaking on behalf of Governor Schwinden, neither as a proponent or opponent. The executive branch has considered MEPA to be procedural, as not adding to the existing statutory authority of an agency. In various cases the act has been before the courts, and one judge held MEPA procedural and another that it is substantive. It is their opinion that the decision should be made by the legislature. His entire testimony is attached, Exhibit '4'.

Senator Etchart chaired the meeting while Senator Dover was presenting testimony at another hearing.

Dave Suhr, ASARCO, Montana Mining Association, stated that he would just like to speak as a proponent of the bill.

Jim Mockler, Montana Coal Council, stated he would support the procedural question, and could see many problems if it is considered substantive. The Dept. of State lands has statutory authority to control strip mining, and that they don't need control of other functions that might arise in an EIS.

Don Allen, Montana Petroleum Association, agreed that the situation should be solved by the legislature making a policy decision, and that their decision should not be affected by the difference in the judge's opinions.

Tom Staples, supported that the act remain procedural so that there would not be a delay in the permitting process. He represented the Montana Trade Commission.

SB 368 (cont.)
Pat Wilson, MONTCO, stated this summer they had been asked to address some questions on the process by EQC, and so had given some thought to the process. The regulations which have undergone the MEPA process should be sufficient to satisfy EIS concerns and a permit applicant who has complied with MEPA regulations shouldn't have to go through the EIS process which is duplication of effort. Recent actions by the Board of Health have been in conflict with the act. Financial costs have been a burden to Montco, and a majority of the information from the EIS was duplication. Special interest groups used the comment period to delay the project and convey their attitude through the press to the general public. They ask for support of the bill. Her testimony is attached as Exhibit '5'.

Senator Dover returned to the meeting at this time.
OPPONENTS: Susan Cottingham, Montana Environmental Information Center, stated the MEPA act is 12 years old and is the cornerstone of policies and laws that govern how the state develops its resources, this law is important and the EIS should not be done away with. Her testimony is attached, Exhibit '6'.

James Goetz, Bozeman, Montana Wilderness Association, stated he felt it would be improper to refer to the bill as one that is procedural only, that the bill was designed for protection of the environment, and he urged the bill be rejected.

Bill McKay, Jr., Northern Plains Resource Council, opposed the bill because they believe it makes the EIS meaningless. It had not been intent of any processes to delay projects such as Colstrip, they had been out to stop them entirely. He urged rejection of the bill.

Jim Ellis, rancher from McCloud, stated he has a personal problem since resources are being developed, that he now has large trucks running through his yard and he doesn't believe this is fair. He should be able to do something about this.

Paul Smith, Env. Inf. Center, from Boulder, stated their organization believes this bill repeals MEPA, and is saying that an EIS will have no force or affect. The policy of MEPA should be as it has been to protect Montanans and save their surroundings. He speaks from experience due to what has happened in Boulder valley.

Mike Nye, stated the bill would be a reduction of information that would be gathered for the people of Montana. The mining companies would be able to eliminate the EIS.

(SB 368 cont.)
John Heberling, Kalispell, stated the EIS process is important to many areas, it shows whether or not anything is going to be installed, where, what and how it will be placed. People deserve to know the impact that will be placed upon them.

Bill Rossbach, Attorney for Cabinet Resource Group and Montana Wilderness Association , stated the action they had filed was responsible for Judge Bennett's decision in this matter. The decision of the judge is very well reasoned, and he could provide copies of that for interested persons. They feel the EIS should be required so that a good hard look is taken at all projects. He submitted the opinion as his testimony, attached as Exhibit '7'.

Nancy Harte, Montana Democratic Party, stated they oppose SB 368, because they believe that Montana's environment should be maintained in a clean and healthful condition, and that was why the Montana Environmental Policy Act was passed. The bill would allow only minimal enforcement of the act, and they urge do not pass. Her statement is attached, Exhibit '8'.

Dede Montgomery, representing Montana Public Interest Research Group, a non-profit organization of University of Montana students, stated they are concerned with our environment and its protection. They believe the MEPA should be strong and effective. Her testimony is attached, Exhibit '9'.

Cathy Campbell, representing Montana Association of Churches, stated they have adopted a position of energy and environment which urges the legislature to strengthen the Montana Environmental Protection Act, and oppose this bill for that reason. Her statement is attached, Exhibit '10'.

Keith Stewart, speaking for himself, said there should be no modification of the MEPA. He believes the tourist industry should be protected and the act is needed to prevent degradation of the environment. His statement is attached, as Exhibit '11'.

Other testimony is attached from persons who wished to enter comments into the record. Coalition for Canyon Preservation, Exhibit '12', Foy Boruch, LWV of Montana, Exhibit '13', Ward Shanahan, attorney on his own behalf, Exhibit '14'.

Hearing was then closed and committee members had questions. Senator Shaw inquired of Mr. McKay regarding their wanting to stop Colstrip 3 & 4, and the fact that the point has now been made that power wasn't needed after all. Mr. McKay agreed, however said that hadn't been the reason for their action, they just didn't want it in the area.

(SB 368 cont.)
Senator Halligan said it should be pointed out that the Environmental Quality Council has been studying this issue for the past 18 months and holding hearings on it as well. There was to have been a decision made, but industrial people said the act was working just fine and that was why EQC didn't take a stand.

Senator Van Valkenburg inquired of Senator Lee, saying he understood the difference between substantive and procedural, but didn't understand the challenging of the EIS. Senator Lee said it is not intention to eliminate the EIS, but the point is once a permit is given, to stop someone from coming back in and changing the situation. Senator Van Valkenburg inquired as to the parties involved in the latest lawsuit. It was stated they were the Cabinet Resource Group, Montana Wilderness Association, vs. Montana Department of State Lands and Montana Department of Health and Environmental Sciences and ASARCO. There was further discussion as to whether the lawsuit was final or would be appealed.

Senator Shaw asked Mr. Suhr of Anaconda as to the injunction filed against them and whether that had an effect on their decision to leave. Mr. Suhr stated that was a different issue.

Senator Lee then passed out to committee members copies of news reports regarding the issue. He stated that there should be checks and balances, that the agencies should not be able to just do whatever they want, even though there is important information contained in the EIS. He urged the committee to concur in the bill so that the legislative guidelines would be set for the agencies. Hearing was then closed.

SENATE BILL 362: To regulate construction of dams and reservoirs. Chairman Dover opened hearing and called on Senator Mark Etchart, sponsor. Senator Etchart said he was asked to sponsor this bill by the Montana Water Development Association. There had been a bill two years ago to require inspection on dams, that bill was killed. As a result, he has worked up amendments, which were given to the committee, attached as Exhibit '1'.

K. M. Kelly, Montana Water Development Association, said they support the bill and concur in the proposed amendments. Montana does not have an adequate dam safety law at present, and that without it, technical and financial support for dams will cease. His testimony is attached, Exhibit '2'. He also submitted a statement from WIFE, Exhibit '3'.

Robert Ellis, Montana Water Development Association, stated he also supports the bill, that they did help develop the amendments proposed and support those as well. The dam safety regulations are needed so that SCS does not take away its expertise.

ROLL CALL

SENATE NATURAL RESOURCES COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date 2-11-83

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (D)	✓		
HALLIGAN, Mike (D)	✓		
KEATING, Thomas F. (R)	✓		
LEE, Gary P. (R)	✓		
MANNING, Dave (D)	✓	late	
MOHAR, John (D)	✓		
SHAW, James N. (R)	✓		
STORY, Pete (R)	✓		
TVEIT, Larry J. (R)	✓	late ✓	
VAN VALKENBURG, Fred (D)	✓		
ETCHART, Mark (R) Vice Chairman	✓		
DOVER, Harold L. (R) Chairman	✓		

DATE 2/11/83

COMMITTEE ON Natural Resources BILL NO.

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Susan Cottingham	Mt. Env. Info Center		368
Jim Mockler	Mt. Coal Council	368 369	
JOE LAMSON	Mt. DEMOCRATIC PARTY		368
Bob Harrington	Mont PIRG		
Kathy Johnston	Mont Pirg		
Erika Kullman	Mont PIRG		
Cathy Campbell	Mt Assn of Churches		368
Marlee Miller	Mont PIRG		
Ken Williams	Western Energy Co	368 369	
C.L. Gilbertson	Mt DES	362	
Lucia Briegs	MPUC		368
John F North	Governor's Office	International Testimony - 5B-368	
Bill Bishop	SBLC		368
Jim McNally	AERO		368
Jay Lenick	LWV of Montana		368
F.M. Kelly	Mont Water Development Assn	362	
Nancy J. Harte	Montana Democratic Party	~~368~~	368
Dede Montgomery	MontPIRG		368
Pamela Powell	Self		
Dave Trout	Self		
Jim Ellison	BVA		368
Miles Keogh	Stillwater Protective Assoc		368
W R Mackay Jr	NPRC		368
Keith & Kay Stewart	FAMILY		368
Jim Staples	Mont Trade Commission	SB368	
Dave Woodgerd	Dept. of State Lands	369	

(Please leave prepared statement with Secretary)

DATE 2.11.83

COMMITTEE ON Senate Natural Resources BILL NO.

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Dennis Hemmer	Dept. of State Lands	SB 369	
EARL D. HOVICK	W. R. GRACE + Co		#362
DAVE SUTTE	ASARCO Troy	368	~~368~~
"	"		362
Wm. J. McCAIG	W.R. GRACE & Co.	368	#362 ~~AMEND~~
Pat Wilson	Montco / Thermal Energy	368	
Don Allen	Mt. Petroleum Assn.	368	
Mary A Langley	MT. MINING ASSN.	368	
Ward Shanahan	self	368 AMEND	
William C Clawson	self		368 369
Fred Swanson	self		368
Deanna Bernhardt	self		368
Paul B Smith	EIC - Boulder Mt		368
B A Ellis	Mont Water Develop	365	
Rodger Foster	Self	362	

William A. Rossbach, P.C.
ATTORNEY-AT-LAW

401 North Washington Street
P.O. Box 8988, Hellgate Station
Missoula, Montana 59807

(406) 543-5156

(Please leave prepared statement with Secretary)

TESTIMONY SENATE BILL 368

My name is John North. I am appearing on behalf of Governor Schwinden, neither as a proponent or an opponent. I will first address the substantive/procedural portion of SB 368. On this issue, the governor urges that a public policy decision be made by the Legislature. When and if a hearing in the House is held on the substantive bill that Representative Vincent has requested, I intend to submit similar testimony that which follows.

The substantive/procedural issue has been around for a long time. In 1976, the Montana Supreme Court issued it landmark Beavercreek II decision. Based on the language of that opinion, the executive branch has consistently interpreted MEPA to be procedural - that is, as not adding to the existing statutory authority of an agency to deny a permit application. Of course, where the agency already has authority, as in an agency-initiated project or in an area of review already covered by the permitting statute, the EIS serves as a basis of information for the permit decision.

Beavercreek did not end the debate! Some interpret the Beavercreek decision differently, contending that the court did not address the substantive/procedural issue and that MEPA is substantive. In both the 1977 and 1979 Legislative Sessions, two bills (one to make MEPA substantive and one to make MEPA procedural) were introduced. In each session, both bills died.

The debate has also continued in the courts - but with no more definitive results. In 1980, one district judge in Helena stated in an opinion that MEPA is procedural; in 1982, another judge held that it is substantive!

The time has come for a definitive resolution of the issue. While debate has continued, so has state government. The executive has, to the best of its ability, interpreted MEPA as it is presently written and has administered the permitting statutes in accordance. But permit applications are pending, and with the advent of the 1982 court decision, agencies must now choose which court decision to follow. Directors and permittees can only hope that their choice is correct.

Clearly, in the interests of avoiding further uncertainty, delay, and expense, the matter should be resolved as soon as possible. And the decision, being one of public policy, must and should be made by the state's policy-making body, the Legislature. I commend Senator Lee for bringing the matter before the Legislature.

Whether the ultimate decision is that MEPA from this point forward is substantive or procedural, the executive branch will do its best to implement the will of people as expressed by the Legislature.

I do have one comment on the portion of SB 368 that eliminates any right of action other than one to require an EIS. This section would prohibit lawsuits over the adequacy of an EIS and might be construed to eliminate enforcement of the requirement that an EIS be done before a permit is granted or a project is undertaken. This goes beyond the substantive/procedural issue. While lawsuits over the adequacy of an EIS may result in

some delay, this provision goes too far. It deprives the public of its ablity to enforce its right to be informed of the environmental consequences of a state action, before the action takes place.

Thank you for allowing me to testify today.

p.3 Ex. 4

NAME: John F. North DATE: 2/11/83

ADDRESS: Governor's Office

PHONE: 3111

REPRESENTING WHOM? Governor's Office

APPEARING ON WHICH PROPOSAL: SB 368

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: Informational testimony submitted

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME Tom S Taylor BILL No. SB368

ADDRESS _____ DATE 2-11-83

WHOM DO YOU REPRESENT Mt. Trade Commission

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

Park One Building
2910 3rd Avenue North
Post Office Box 789
Billings, Montana 59103-0789
(406) 252-5208

Sen. Nat. Res.
2/11/83
Pat Wilson

MONTCO

Supporting SB368

In order for Montana to successfully chart a course for future environmental management, it must look at what it has done in terms of its legislation, regulation and policy decisions over the past ten years and ask, "Has it achieved what it intended, or has it exceeded the legislatures intent?" If after undertaking a comprehensive review, it is determined that Montana's regulatory agencies have exceeded legislative intent, are the legislature and state government willing to endorse corrective legislation to address this situation?

This summer we were asked by the Environmental Quality Council to express our opinions and perceptions relative to the Montana Environmental Policy Act regarding the costs, benefits, and effectiveness of the implementation of MEPA. Because these questions deal directly with the issue of this bill, let me share with you our answers to the EQC's questions.

- In light of there being other state laws that are designed to protect particular components of the human environment, i.e., air and water quality statutes, do you believe that there is a need for the Montana Environmental Policy Act?

There are actually two answers to this question. In the first case, MEPA can provide the necessary procedures to ensure that the promulgation of regulatory programs results in balanced regulations in terms of

economics, technology, and environmental quality. Such laws and regulations lay the real groundwork for the co-existence between man and his environment. Thus, those regulations which have undergone the MEPA process should be deemed as sufficient programs to satisfy EIS concerns. In other words, permit applicants who comply with "MEPA approved" regulatory programs should not have to undergo the EIS process.

This assumption leads directly into the second case. To require the preparation of an EIS on a project that must comply with "MEPA approved" regulatory programs is simply duplicative in terms of time and economics. Agencies responsible for the administration of such programs should be competent to determine whether or not the human environment will be protected without the preparaton of an EIS.

- In your opinion, how well has the actual implementation of MEPA satisfied the purpose for which it was passed?

Recent action by the Board of Health on the proposed PSD regulations is a prime example of neglect for MEPA. In its lack of wisdom, the Board adopted the most stringent regulations possible without examining the actual environmental, economic impacts. The Air Quality Bureau subsequently stated; "The major effect of the statewide baseline is that all emissions would consume increment and may exceed the available increment". This raises the question of whether or not the Bureau could legally issue a permit. In the case of Montco's permit application, we were told by the Board that this action would preclude us from receiving a permit. Surely this action was in direct conflict with 16.2.603(3)(b) which requires the preparation of an EIS on actions which may be either significantly growth inducing or growth

inhibiting.

Implementation of MEPA in regards to the preparation of an EIS on proposed Projects has also created negative consequences. The process has been used as a platform by special interest groups to display their emotionalism in an effort to delay and prevent any type of development.

MPEA should not expand the authority of a state agency to grant a permit based on environmental considerations. The purpose of the state's environmental laws are to provide the basis for reasonable regulations by which to review, approve or deny a permit application. If MEPA is to be considered an over-riding permitting authority, then the existence of environemental laws and personnel are meaningless. In several cases, MEPA has allowed special interest groups to antagonize applicants and agencies, resulting in permitting delays and unnecessary additional expenditures.

The costs associated with MEPA are excessive, duplicative, and uncontrollable with the burden of those costs falling on companies wishing to do business in Montana. Financially the burden to Montco has been $518,000 for the release of the Draft EIS, with additional monies required for completion of the Final EIS. These expenditures are <u>in addition</u> to the $5 million expended to collect the information necessary to satisfy the requirements of the Montana Strip Mining Act and Regulations. A majority of the information utilized in the DEIS was duplication of the data submitted in the Montco Permit Application to the Reclamation Bureau.

The release of the DEIS, public hearing, and comment period were seized upon by special interest groups to delay the project by displaying personal

emotionalism, requesting additional studies, demanding that Montco mitigate all impacts, and suggesting the preparation of supplements to the DEIS.

If MEPA is charged with the responsibility of creating and maintaining conditions under which man and nature can coexist in productive harmony, then those regulating growth must realize that the total burden cannot be placed on the company. Furthermore, establishment of the Coal Severance tax provides for a large majority of mitigative measures.

- What benefits, if any, do you believe are associated with MEPA implementation? Who enjoys these benefits?

Unfortunately, a majority of so-called benefits have been enjoyed by three distinct groups: special interest groups, a select group of state employees, and environmental consultants.

Special interest groups benefit by developing well rehearsed emotional presentations at public hearings, letter writing campaigns, and press releases conveying their attitudes as those of the general public. These factors further the state's reputation for "anti-business", permitting delays, and biased views of energy development.

A select group of state employees benefit by being provided with a forum (EIS) to expound upon their own personal beliefs, judge with little experience the results of data collected by well trained and experienced professionals, and request additional costly information which has little or not bearing on the impacts of the proposal.

Environmental consultants benefit by selling their expertise to

companys for collecting unnecessary information and conducting analyses on inadequate environmental impact statements.

On the positive side, MEPA has benefitted the people as a whole by ensuring the promulgation of reasonable regulatory programs. However, as indicated previously, this has not always been the case.

The resource industry who is accustomed to taking risk in making a "go" or "no go" decision regarding a project, must be able to access the cost and time that is required in gaining the necessary permits to put their project in compliance with state or federal laws. Business is entitled to a clear and manageable environmental policy that spells out the rules of the game at the front end.

Therefore we ask your do pass for SB368.

Exh # 6
SB368
2-11-83

Susan Cottingham

SB 368. A bill to amend the Montana Environmental Policy Act. Testimony presented in opposition by the Montana Environmental Information Center. February 11, 1983.

The Montana Environmental Information Center was organized by Montanans ten years ago to provide research, information and advocacy on natural resource issues. During this decade our goals have been twofold: to maintain and enhance the quality of both our natural and human environments and to educate and involve citizens in decisions that will impact this environment.

The Montana Environmental Policy Act is the cornerstone of policies and laws that govern how our state will develop its resources. There is no law on the books of greater importance to the achievement of Montana's collective environmental goals than MEPA. It is the only law which fully implements our constitutional guarantee to a clean and healthful environment.

Now 12 years old, MEPA embraces a fundamental set of premises:

First, the recognition that we have the power to make decisions and develop projects, which can have serious impacts on the environment and on human health and welfare;

Second, that we should endeavor to make such decisions not in the dark, from a position of ignorance, but with full knowledge of the consequences, having compared all of the available alternatives as to their effect;

Third, that we should make decisions that are this significant in a careful way, a way that involves the public, so that all Montanans can understand the potential effects of the proposed major decisions and can participate in the process of making those decisions; and

Fourth, that once we have studied and understand the effects of the proposed decision, the reasonable alternatives available, and possible ways to reduce or eliminate the major adverse effects, we should use that information to make a rational, intelligent decision.

SB 368 removes the major purpose of MEPA by requiring agencies to ignore much of the information gathered in this important public review process when it makes its final decision on a project. This would eliminate the purpose of MEPA which is to use a comprehensive and open analysis of all the interrelated effects of a major state decision so that impacts can be mitigated and the best possible decision can be reached. We believe the language of MEPA is clear and that agencies can and should implement this language with rules. This is the best approach to clear up uncertainty.

Instead we are presented with SB 368 which makes the EIS process mandated by MEPA largely a waste of time and money. It

ensures that information compiled under the Act will gather dust on a shelf. The realization that better decisions would come from the collection and use of more complete information led to MEPA in the first place. SB 368 which seeks so clearly to limit the applicability of MEPA is contrary to the original purpose of the Act and deceives the public--which expects MEPA to make for better decisions to protect the environment. MEPA allows an agency to consider all impacts of a proposed project and to use reasonable measures to reduce or mitigate those impacts. Instead of invalidating this process through passage of SB 368, we urge the administrative agencies to fully implement MEPA by adopting clear and consistent regulations which would clarify reporting and analysis requirements under the Act. These regulations would achieve the goals of reducing paperwork, defining time frames, clarifying agency authority and would provide industry, agencies and the public with a specific understanding of the requirements of MEPA.

SB 368 does not achieve these goals and serves only to make our most important environmental law meaningless. We strongly urge this committee to give a DO NOT PASS recommendation to this bill.

"clarification or reconsideration." These motions are addressed to Counts I, II and VIII of the amended complaint. In Count VIII plaintiffs allege groundwater will be polluted by discharge from the tailings ponds of the mine. Asarco's and DSL's motions for partial summary judgment on this count were granted during the hearing on the motions on the ground the count was not timely. The count may be revived, however, when timely.

Counts I and II involve DSL's assertion that MEPA does not provide it with authority to condition, reject or grant a permit under the HRMA. As to these counts we originally took the following action:

1.) Plaintiff's motion for partial summary judgment as to Count I, made on the ground DSL misinterpreted the effect of MEPA on its function under the HRMA, was granted.

2.) Plaintiff's motion for partial summary judgment as to Count II, made on the ground DSL relied upon an incorrect interpretation of the effect of MEPA on its function under the HRMA in granting the permit, was denied as there remained issues of material fact which were left unresolved.

Defendants Asarco and DSL present basically the same arguments as were made prior to our earlier decision, urging that their motions for summary judgment as to Count I should be granted, which would mandate a judgment in their favor as to Count II as well. These parties cite a 1980 decision by Judge Meloy which was not previously considered. We do not find that decision, Northern Tier Information Committee v. Northern Tier Pipeline Company (Lewis and Clark County, Cause No. 44987), controlling. The discussion in that opinion pertained to the eminent domain statute rather than the HRMA, and the issues in that case were determined moot.

We now address, for the second time, the contention that MEPA does not supplement DSL's permit authority under the HRMA. We reach the same conclusion as we reached in our first encounter with this issue but will discuss our holding in some detail in order to assure

complete understanding. We begin by noting that MEPA itself specifies that its policies and goals are supplementary to the existing authorizations of state boards, commissions and agencies. 75-1-105, MCA. Defendants, however, assert Montana case law mandates a contrary conclusion. We feel the major Montana cases on this issue, Montana Wilderness Association v. Board of Health and Environmental Sciences, 171 Mt. 477, 559 P.2d 1157 (1976), and Kadillak v. Anaconda Co., 36 St. Rptr. 1820, 602 P.2d 147 (1979), have been adequately distinguished in our earlier opinion. Those cases were decided on the basis of a direct conflict between the agency's specific regulatory statute and MEPA. Asarco and DSL contend a conflict can be found in this case in that the HRMA specifically enumerates the only basis for which a permit can be denied. 82-4-351, MCA. They say conflict would be created if MEPA were allowed to supplement these bases. A similar argument was made in Environmental Defense Fund, Inc. v. Matthews, 410 F. Supp. 336 (D.C.D.C.1976). Federal interpretation of the National Environmental Policy Act (NEPA) is relevant in interpreting MEPA. Kadillak, supra 602 P.2d at 153. The argument that a direct conflict was thus created was soundly rejected in Environmental Defense Fund, Inc. The following language seems pertinent:

> The FDCA does not state that the listed considerations are the only ones which the Commissioner may take into account in reaching a decision. Nor does it explicitly require that product applications be granted if the specified grounds are met. It merely lists criteria which the Commissioner must consider in reaching his decision. In the absence of a clear statutory provision excluding consideration of environmental factors, and in light of NEPA's broad mandate that all environmental considerations be taken into account, we find that NEPA provides FDA with supplementary authority to base its substantive decisions on all environmental considerations including those not expressly identified with the FDCA and FDA's other statutes. Environmental Defense Fund, Inc., supra at 338.

This line of analysis is buttressed by Zabel v. Tabb, 430 F. 2d 199 (5th Cir. 1970), in which NEPA and the Fish and Wildlife Conservation

Act were found to provide the Secretary of the Army with authority to refuse projects for ecological reasons despite the fact the project would not interfere with navigation, flood control or the production of power. In Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971), the court discusses the fact that prior to NEPA the Atomic Energy Commission asserted it was not statutorily authorized to weigh the adverse environmental impacts of its actions. "Now, however, its hands are no longer tied. It is not only permitted, but compelled, to take environmental values into account. Perhaps the greatest importance of NEPA is to require the Atomic Energy Commission and other agencies to consider environmental issues just as they consider other matters within their mandates." Id. at 1112 (emphasis in original).

We are aware of other federal cases in which a different conclusion has been reached. In Natural Resource Defense Council v. Berklund, 609 F.2d 553 (D.C. Cir. 1979), for example, the court held the Secretary of Interior was without discretion to deny a lease to a qualified applicant.The statutory language, which the court called "unequivocal and clear,"id. at 557, was that a permittee, upon establishing the presence of 'commercial quantities' of coal, "shall be entitled to a lease under this chapter for all or part of the land in his permit." 30 USC §201(b)(1970)(amended 1976). Similarly, in State of South Dakota v. Andrus, 614 F.2d 1190 (8th Cir. 1980)cert. denied, 449 U.S. 822 (1980), the court noted the issuance of a mineral patent has been well established as a ministerial act and the environmental impact statement (EIS) requirement is usually not applied when a ministerial act is involved. In both of those cases the decision turns on the conclusion that the language of the statute removes discretion from the decision maker. In this case, however, a purely ministerial act is clearly not involved. The pertinent statutory language is: "A permit may be denied for any of the following

reasons. . . .". As opposed to a declaration that the applicant shall be entitled to a permit upon the establishment of certain conditions, the use of the word "may" in the statute indicates the decision maker does retain discretion. See American Electric Power Service Corporation v. Federal Energy Regulatory Commission, 675 F.2d 1226, 1241 (D.C. Cir. 1982). We think the language quoted above from Environmental Defense Fund, Inc., supra, is applicable here and conclude there is no clear statutory language barring consideration of environmental factors. There is, then, no conflict between MEPA and the HRMA and DSL can therefore reject or condition a permit on environmental grounds additional to those listed in Section 82-4-351, MCA.

Further support for this conclusion can be found in discussions of the purpose of an EIS. Asarco and DSL assert that their interpretation of MEPA as not supplementing DSL's decision making authority would not render an EIS meaningless as the EIS would still perform its function as a disclosure law. We conclude MEPA was intended to affect decision making as well as to disclose environmental consequences, and again refer to analysis of NEPA to support this statement. As recognized by the Council on Environmental Quality, "[t]he primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and action of the Federal Government. . . . An environmental impact statement is more than a disclosure statement. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions." 40 CFR §1502.1 (1981). In Weinberger v. Catholic Action of Hawaii, ____U.S. ____, 102 S.Ct. 197 (December 1, 1981), the United States Supreme Court noted that the aims of NEPA's EIS requirement are "to inject environmental considerations into the federal agency's decisionmaking process. . . . and to inform the public that agency has considered environmental concerns in its decisionmaking

process." Id. at 201. Environmental Defense Fund, Inc. v. Corps of Engineers, U.S. Army, 470 F.2d 289 (8th Cir. 1972), makes it clear NEPA "is more than an environmental full-disclosure law. NEPA was intended to effect substantive changes in decisionmaking." Id. at 297. See also Environmental Defense Fund v. Tennessee Valley Authority, 468 F.2d 1164, 1174-1175 (6th Cir. 1972) and Trout Unlimited v. Morton, 509 F.2d 1276, 1282 (9th Cir. 1974). As summarized in Monroe County Conservation Council, Inc. v. Volpe, 472 F.2d 693, 697 (2nd Cir. 1972), ". . . the primary purpose of the impact statement is to compel federal agencies to give serious weight to environmental factors in making discretionary choices. . . ." The cases quoted above indicate serious weight involves more than merely disclosing environmental consequences. Those consequences must be considered in the agency's decisionmaking process, just as the agency considers other matters within its mandate. In this case, then, DSL must consider other environmental factors in making its decision to grant, condition or deny a permit just as it considers air and water quality and reclamation. It is not sufficient for the agency to note the presence of adverse environmental factors while denying authority to do anything about them. Nor can an agency "escape the requirements of NEPA [MEPA] by excessively constricting its statutory interpretation in order to erect a conflict with NEPA [MEPA] policies." Natural Resource Defense Council v. Berklund, supra at 558. We note the fact that other states have reached similar conclusions as to the impact of their state environmental policy acts. See Department of Natural Resources v. Lake Lawrence Public Lands, 92 Wash.2d 656, 601 P.2d 494, cert. denied, 449 U.S. 830 (1980); City of Roswell v. New Mexico Water Quality Control Commission, 84 N.M. 561, 505 P.2d 1237 (1972), cert denied, 84 N.M. 560, 505 P.2d 1236 (1973); Town of Henrietta v. Department of Environmental Conservation of the State of New York, 430 N.Y.S. 2d 440 (1980).

We find additional authority for our conclusion in the following

sections of the 1972 Montana Constitution:

> Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities. Art. II, §3 (emphasis added.)

> Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
> (2) The legislature shall provide for the administration and enforcement of this duty.
> (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. Art. IX, §1.

The fact that Montana has given constitutional status to maintenance of a clean and healthful environment demonstrates the heightened importance which must be placed on actions which affect the environment of this state. There is no comparable constitutional protection afforded federal actions. The conclusion we reached above as to the impact of MEPA was based largely on federal interpretation of NEPA. The presence of these additional constitutional provisions provides authority for even stronger environmental protection in this state. See Tobias and McLean, Of Crabbed Interpretations and Frustrated Mandates, 41 Mt. L. Rev. 177 (1980). In the event we could not find support for our conclusion in NEPA interpretation, the combination of MEPA and the above constitutional sections would provide the necessary authority.

In the interest of thoroughness we respond to two additional arguments made by Asarco and DSL. The first is that the legislative background of MEPA and the HRMA provides support for their interpretation of MEPA's impact, or rather the absence thereof. The argument is since both acts were passed the same day, the

legislative intent could not have been to allow MEPA to supplement DSL's permitting authority. There would be no reason to specifically enumerate the bases for denial if these bases were already provided for and in fact enlarged by MEPA. We hesitate to attempt to conclusively ascertain the legislative intent on this issue from the fact of the simultaneous passage. We would point out, however, that in some instances, such as when no major state action is involved, portions of MEPA would not apply to DSL's actions. The provisions of Section 82-4-351, MCA, would operate in the absence of certain supplementary MEPA provisions in such a situation.

Secondly, defendants repeatedly refer to a statement in Montana Wilderness Association, supra 559 P.2d at 1161, which purportedly supports defendant's interpretation of MEPA. The statement is that MEPA does not contain any regulatory language. We repeat our observation that that case was decided on the basis of conflict between MEPA and the Subdivision and Platting Act, a factor which is not present here. We would also point out that MEPA is patterned after, and almost identical to, NEPA. A great deal of our authority for reaching our conclusion comes from federal case law interpreting NEPA. The federal courts have based their decision on statutory language almost identical to ours, and we therefore cannot agree that the statement from Montana Wilderness requires a change of decision.

For the reasons stated above, Asarco's and DSL's motions for summary judgment as to Count I are denied. In light of this decision it is not necessary to discuss Count II except to note material issues of fact still remain as to that count. We therefore also deny the motions for summary judgment as to Count II.

Dated this 29th day of September, 1982.

GORDON R. BENNETT
District Judge

cc: Counsel of record

Exh # 8

WITNESS STATEMENT

NAME Nancy J. Harte BILL No. 368

ADDRESS Box 802, Helena DATE 2-11-83

WHOM DO YOU REPRESENT Montana Democratic Party

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

see attached

FORM CS-34
1-81

Exhibit '8'
Sen. Nat. Res.
2/11/83

8

MONTANA DEMOCRATIC PARTY

February 11, 1983

TESTIMONY PRESENTED TO THE SENATE NATURAL RESOURCES COMMITTEE IN OPPOSITION TO SENATE BILL 368, TO RESTRICT DECISION-MAKING AUTHORITY AND RIGHT OF ACTION ENABLED UNDER THE MONTANA ENVIRONMENTAL POLICY ACT.

Mr. Chairman and members of the committee, for the record my name is Nancy Harte, legislative coordinator for the Montana Democratic Party.

We oppose House Bill 368. Montanans wanted assurances from the state government that their environment would be maintained in a clean and healthful condition -- that's why the Montana Environmental Policy Act was passed in the first place, twelve years ago.

MEPA verifies the relationship between people and the environment, recognizing that both have an impact on each other. It also recognizes that governmental policy should take into account the effect population growth, industrial expansion, technological advances and other human activities have on Montana's resource base. Without MFPA, government's view of environmental policy would have mankind living in a vacuum.

Having laws that state general policies and philosophies for government are good, but laws need to allow for authority to carry out those policies. As it is now, state agencies have authority to act based on MEPA, whose laws do not override already existing authority of state agencies to act in environmental activities, but supplement it.

Montana Democratic Central Committee • Steamboat Block, Room 303 • P.O. Box 802 • Helena, MT 59624 • (406) 442-9520

Executive Board

Ron Richards Chairman	Sharon Peterson Vice Chairman	N. J. Dougherty Secretary	Ralph Dixon Treasurer	Joe Lamson Executive Secretary	James Pasma Nat'l. Committeeman	Dorothy Bradley Nat'l. Committeewoman
Phil Campbell Helen Christensen	Jerry Hudspeth Chas Jeniker	Wilma Jodsaas Junne Johnsrud	Sally Jordan Helen Kerr	Don McKee Bruce Nelson	Rich Pavlonnis Howard Toole	Bob Wilkins Bobbie Wolfe

Sen. Chet Blaylock Rep. Dan Kemmis Phillis Moore Sherri Stieg

House Bill 368 would change all that. This bill would allow state agencies to act in only the most minimal way to enforce the policies and goals set out in the Montana Environmental Policy Act.

It's not as if Montanan's want their environmental laws weakened, though supporters of this bill would have you believe that is the case. In a survey of Montana Democrats last summer, 88 percent said that they wanted Montana's environmental laws strengthened or at least maintained at current levels. A New York Times/CBS News Poll conducted in the autumn of 1981 showed that on a national level 67 percent of Americans supported environmental laws, even at a cost to economic growth.

Like most Montanans, Montana Democrats are concerned with attempts to weaken our environmental protection laws. At the party's Platform Convention last year, Democrats took a firm position on MEPA. Quoting from the platform, Democrats said, "We affirm our strong support of MEPA, as the central environmental law that guarantees Montanans the right to participate in and understand decisions that affect their environment. We affirm our solid resistance to any attempt to weaken this essential legislation."

Montanans want a clean and healthful environment, and they want laws to protect that environment. We urge a "do not pass" recommendation on House Bill 368.

Sen. Nat. Res.
2/11/83

MONTANA PUBLIC INTEREST RESEARCH GROUP
729 KEITH AVENUE
MISSOULA, MT. 59801
(406) 721-6040

TESTIMONY BEFORE THE SENATE COMMITTEE ON NATURAL RESOURCES - February 11, 1983

Good morning, Mr. Chairman and members of the Senate Committee on Natural Resources.

My name is Dede Montgomery. I am a student at the University of Montana and chairperson of the Montana Public Interest Research Group (MontPIRG). MontPIRG is a non-profit, non-partisan corporation funded and directed by students at the University. MontPIRG performs research, educational and advocacy work on issues that are important to students as citizens. Consumer protection, the environment and governmental responsibility are the major areas of focus.

I am here today on behalf of MontPIRG to support the Montana Environmental Policy Act (MEPA). Montana needs a strong, effective MEPA, one that contributes to the ability of our state agencies to make decisions that help preserve and protect our natural resources. As citizens, a strong MEPA will help maintain our constitutional right to a clean and healthy environment. Your support of a strong and effective MEPA will go a long way to represent the best interests of Montanans.

Thank you.

Ex. 10
Sen. Nat. Res.
2/11/83

10

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 1708 • Helena, MT 59601

February 11, 1983

MR. CHAIRMAN AND MEMBERS OF THE SENATE NATURAL RESOURCES COMMITTEE:

I am Cathy Campbell from Helena, representing the Montana Association of Churches. I am testifying in opposition to Senate Bill 368.

The Montana Association of Churches has adopted a position paper on Energy and Environment in which we specifically urge the legislature to maintain and strengthen, where necessary, the Montana Environmental Policy Act.

Our interest in this kind of legislation stems from our belief that the earth belongsto God and that all parts of it are involved with all others. The Christian faith sees the role of human beings in the world as that of a steward.

We share with the people of Montana a desire to see both social justice and environmental quality, and support legislation which promotes and maintains both. The achievement of this goal is most often threatened by an apparent and unnecessary conflict between economic health and environmental protection. However, there is mounting evidence to suggest that a commitment to environmental quality actually increases employment, and for a larger sector of the economy.

We have a profound respect for creative human labor and the limits of the earth. Because of this, we urge you to oppose SB 368.

WORKING TOGETHER:

American Baptist Churches of the Northwest

American Lutheran Church Rocky Mountain District

Christian Church (Disciples of Christ) in Montana

Episcopal Church Diocese of Montana

Lutheran Church in America Pacific Northwest Synod

Roman Catholic Diocese of Great Falls

Roman Catholic Diocese of Helena

United Church of Christ Montana Conference

United Presbyterian Church Glacier Presbytery

United Methodist Church Yellowstone Conference

ıited Presbyterian Church Yellowstone Presbytery

Ex. #11
Sen. Nat. Res.
2/11/83

Form CS-34
1-79

NAME R. KEITH STEWART BILL NO. SB 368

ADDRESS 7550 So. 19TH ST DATE 2/11/83

WHOM DO YOU REPRESENT FAMILY & TOURISTS (class I)

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: as proposed by SB 368

There should be no modification of the MEPA. To do so is to alter this act in an unacceptable manner in that the act would be weakened. The MEPA should be a substantive act. Anything that deters from the substantive aspects of MEPA is a process of diminishing the Act; such action likely would provide for substantial environmental degradation.

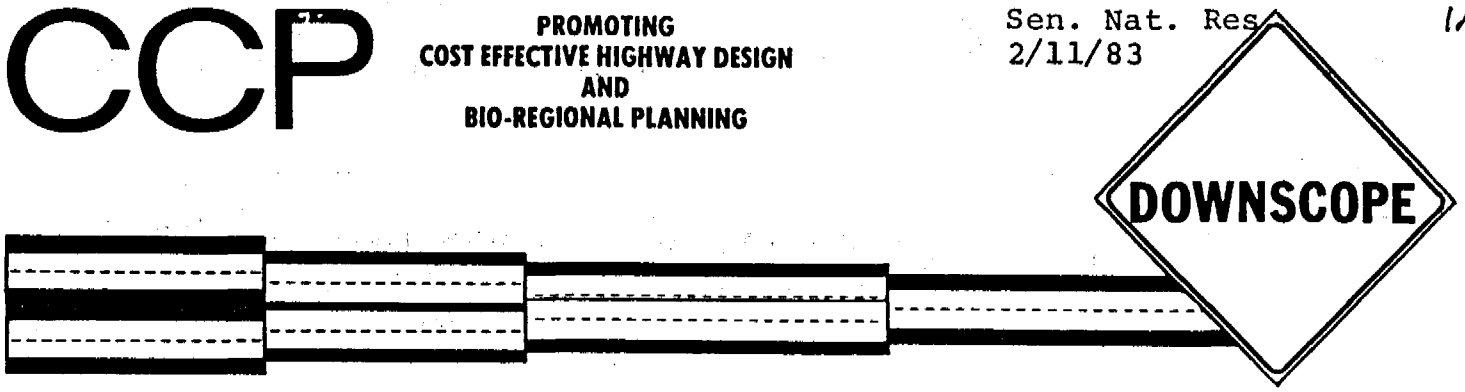
Agency decision-making authority should not be altered relative to MEPA, except to expand that authority wherein such expansion is in compliance with the Policy of the MEPA.

With the declining role of the U.S. EPA and its decrease of support (financial and other) to the States, about 60% during the Reagan Administration so far, there is every need to strengthen MEPA so as to help prevent environmental degradation, and the Montana needs the Tourist industry which like we and my family will look to other areas where environmental degradation is less if the MEPA is weakened in any way.

Sincerely,
R. Keith & Ray S. Stewart
& family

CCP

PROMOTING
COST EFFECTIVE HIGHWAY DESIGN
AND
BIO-REGIONAL PLANNING



February 11, 1983

RE: OPPOSE SB 368

TO: Senate Natural Resources Committee

MEPA ASSURES FUTURE MONTANANS A SAFE ENVIRONMENT

A clear need exists for a complete and unadulterated law such as MEPA which addresses an "aggregate of the ecological influences and the external conditions" affecting the human environment, including human living patterns, safety considerations, and other social and economic factors. Too often in these debates the focus falls upon air and water quality politics and we forget that our "environment" includes other important aspects of human living patterns and needs, such as safety. MEPA is a mechanism which also assures future Montanans of a safe and healthful environment. MEPA works to protect public safety.

MEPA CAN ASSURE SOUND DECISION-MAKING BASED ON SUBSTANTIVE DATA

MEPA expands data base requirements. Too often in the past, important decisions have been made by seat-of-the-pants decision-making. Soon the repercussions develop -- chaos, more problems created that cost more money to correct. It appears unreasonable to suggest that agencies not apply substantive information gathered in the MEPA process. The exact opposite is needed for sound long-range decision-making.

MEPA IS NEEDED TO INSURE THAT DECISIONS FOR MAJOR EXPENDITURES OF PUBLIC MONEY ARE COST EFFECTIVE AND BASED UPON SUBSTANTIVE DATA

State government cannot afford any more boondoggles and must become more sophistocated in philosophy. An unadulterated MEPA can assure Montanans that public expenditures are cost-effective.

More than ever, the excellerating problems facing our state, nation, and world increase the need for government decisions based on sound data. SB 368 is obviously a big step backward in this regard.

COALITION FOR CANYON PRESERVATION, BOX 422, HUNGRY HORSE, MT 59919
DOWNSCOPING FOR BETTER USE OF SCARCE HIGHWAY FUNDS.

Sharon L. Wellows
Coordinator

Jay Bruick
Law of Montana

SB 368 MEPA procedural

MEPA is the only statute that addresses itself to the environment as a whole. All aspects of the environment are interrelated, and if this bill passes, co-ordination of environmental review would be discouraged, and we'd be back to the piecemeal approach before MEPA.

We have come a long way in making the importance of environmental concern, and in making decisions beneficial to the citizen, economy, and the environment. The passage of this bill would clearly be a step backwards. Therefore, the law of Montana

NAME Ward A. Shanahan BILL NO. SB 368

ADDRESS P.O. Box 1715, Helena, MT 59624 DATE 02/11/83

WHOM DO YOU REPRESENT On His Own Behalf

SUPPORT XXX OPPOSE _____ AMEND X X X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am a lawyer in Helena, and the thoughts expressed herein are my own and not those of any particular client of mine.

It is my firm belief in support of Senator Lee's bill SB 368 that MEPA needs some clarification because of the recent tendency to try to expand its application beyond the clear statements of the statute. Section 75-1-105, MCA, now provides that MEPA is supplementary to existing authority. But, despite this clear statement, opposing parties have taken the following contrary positions in past years:

On one side, it is maintained that MEPA provides only the procedural requirement of doing an EIS and that it supplements the agency's authority in only this way. This is the side the Department of State Lands took in the recent Cabinet Wilderness case. The Department maintained that it had to presume that MEPA was constitutional. Therefore, if they concluded that it created new substantive rights, this would raise a serious problem because the act contains no specific standards set by the legislature. MEPA lists in general terms broad categories of

inquiry and requires the agency to "fill in the gaps." If the agency, by "filling in the gaps," creates new substantive rights, the act may be held to be an unconstitutional delegation of legislative power.

On the other side of the argument, the parties urge that MEPA not only creates substantive rights which extend the scope of the particular permit proceeding to the consideration of environmental values discovered in the EIS process, but, also, that these values may be paramount in importance to the private and property rights of people. Thus, following this rationale, the supplemental action of MEPA is to add these new rights to those things which are protected as part of the public health, welfare, and safety. (E.g., animals, trees, birds, and flowers have legal rights which may exceed or override human rights, including the property rights of the developer.)

This is the gist of the so-called "procedural versus substantive argument" which has been discussed in recent months by the EQC, the courts, and the press.

Both of these positions distort a reasonable application of MEPA, in my opinion. Environmental protection has real legal "substance," both in the Montana Constitution, Article II, section 3 (personal right to a "clean and healthful environment") and in MEPA (Section 75-1-103, MCA--"recognizing the critical importance of . . . environmental quality to the overall welfare and development of man . . . ."). Thus, it cannot be limited to the

academic exercise of merely drafting an EIS so that industry, government officials, and environmentalists can have a "spirited argument" before a decision is reached.

On the other hand, the enactment of MEPA should not be viewed as establishing rights beyond the personal rights enumerated in the Constitution and expressed in the act itself. Despite the insistence of ecologists, in my opinion, animals, trees, streams, and "eco-systems" do not and should not have legal rights of their own which are equal to, or superior to, the rights of humans. The "substance" of the act, if any, should be related to the duty of the agency to protect the public health, welfare, and safety, as well as the protection of private rights, including the economic rights of the developer.

I don't think the legislature should decide this "substantive versus procedural" argument because I think it should be left to the courts in each case. But you should clarify the clear statement already in the act that MEPA is "supplemental" and should re-emphasize that the inquiry under that act is limited as follows:

(a) To the proceedings conducted by an agency acting pursuant to specific statutory authority.

(b) To those considerations where MEPA does not conflict with the agency's specific statutory authority.

(c) To the citizens' reasonable opportunity to particiate in the decision-making process under Article II, section 8, of the Constitution, or protect private rights under Article II, section 17, of the Constitution.

(d) To a determination that protects the developer's constitutional rights so that if it is found that a substantive environmental value is paramount to the developer's property rights, so as to require denial of a permit, the agency is aware of its duty to compensate the developer for a "taking" and to award compensation or other equal protection.

It is my position, therefore, that MEPA does, under certain circumstances, expand the authority of the agency "substantively" so long as it does not interfere with the agency's primary mission and so long as it is confined to the proceedings brought before the agency. Subparagraph (2) of SB 368 would accomplish this if it provided as follows:

However, nothing in this chapter creates any rights of action in addition to those available within the scope of administrative and judicial proceedings held pursuant to such existing authorizations.

In addition, you should clarify the legislative policy further by adopting a statement of intent for this act as follows:

The intent of this act is to clarify the Montana Environmental Policy Act, Section 75-1-101 et seq., MCA, by re-emphasizing the supplementary nature of MEPA to the existing specific authority of state offices, boards, and agencies. The act was not intended to create new rights or rights of action in any person or thing. It is also the intent of this act to re-emphasize that the application of MEPA, if any, must take place within the existing administrative remedies provided by the Montana Administrative Procedure Act, Section 2-4-101 et seq., MCA, and the rights of judicial review allowed thereunder.

#14
2-11-83

The amendment and statement of intent will clarify the application of the law, preserve a concern and protection of the environment, and respect private rights.

Respectfully submitted,

Ward A. Shanahan
P.O. Box 1715
Helena, MT 59624
406/442-8560

0771W

Form CS-34
1-79

NAME Paul B Smith BILL NO. 368

ADDRESS Boulder, Mt DATE

WHOM DO YOU REPRESENT EIC

SUPPORT OPPOSE X AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

EQC faces environmental questions

How much weight for those EIS's?

BY TOM COOK
IR State Bureau

The Legislature this session is likely to consider how much weight environmental impact statements should have in the state's decision making process, the Environmental Quality Council was told Tuesday.

John Carter, research writter for the EQC, suggested that the council hold a "full blown" hearing to help settle the dispute, which he said has resulted in conflicting decisions in the state's courts since the Montana Environmental Policy Act was created in 1971.

"It fails to tell agencies how they are to use an EIS once it has been prepared," Carter said.

The Supreme Court has ruled that the requirement for an environmental statement is procedural and shouldn't be used to expand an agency's statutory authority to grant permits or take other actions, Carter said. But the District Court in Helena has held that an environmental statement can be used to make such a determination — a decision that probably eventually will be appealed to the Supreme Court, he said.

Carter said the dispute has led to confusion at the agency level in state government and disparity in how much weight to place on environmental statements.

Sen. Harold Dover, R—Lewistown, said that environmental statements are a major factor discouraging economic growth of the state, and the entire question of whether they should be required needs to be re-examined by the Legislature, not the EQC.

But Sen. Dorothy Eck, D—Bozeman, said environmental statements have been effective in at least making the public and state officials aware of the environmental effects of their decisions, and the EQC should take a position in support of them. "By doing nothing we aren't doing a favor to the people concerned about the environment or the people interested in complying," she said.

Carter said that if the EQC doesn't make a decision on the use of environmental statements, based on fact, the decision will be made on a political basis by the Legislature.

John North, who represents Gov. Ted Schwinden on the EQC, said the administration prefers that the Legislature, not the courts, make a decision on the matter. He said the governor wants the EQC to take a leadership role in developing legislation to determine the use of environmental statements.

Rep. Dave Brown, D—Butte, said there are "shades of grey" between elimination of environmental statements and complete reliance on them for granting permits. Brown convinced the council to put off a decision on any legislation until its next meeting when draft legislation defining specific roles for environmental statements can be created.

The Independent Record, Helena, Mont., Wednesday, November 24, 1982

Great Falls Tribune Friday, December 17, 1982

Environmental act revision sought

HELENA (AP) — The Environmental Quality Council has been asked by Schwinden administration officials to take the clout out of the Montana Environmental Policy Act.

EQC Director Deborah Schmidt said the request came last week from the directors of the departments of Fish, Wildlife and Parks, Natural Resources and Conservation, State Lands, Health and Environmental Sciences and Agriculture.

The agency directors want MEPA made "procedural." Environmental impact statements would merely list environmental problems and would not provide the basis for accepting or rejecting projects or actions.

Schmidt said that only the state agency heads say legislation is necessary to change the act. Environmentalists and industry want to maintain the status quo, she said.

The request is contrary to a recent ruling by District Judge Gordon Bennett of Helena, who ruled MEPA is substantive law that gives state agencies authority to reject, accept or accept with certain conditions developments based on environmental considerations.

John North, the governor's attorney, and his representative on the environmental council, said the department heads believe MEPA standards are not specific enough to guide agencies in making decisions.

North said MEPA should be procedural because state agencies have other authority to grant or deny development permits.

The Independent Record, Helena, Mont., Thursday, December 16, 1982

Top officials want MEPA 'narrowed'

By JIM ROBBINS
IR State Bureau

Schwinden administration officials have asked the Environmental Quality Council to draft legislation to narrow the focus of the Montana Environmental Policy Act (MEPA).

The request runs counter to a recent ruling by Helena District Judge Gordon Bennett, who said MEPA is a substantative law that gives state agencies authority to reject, accept, or accept with certain conditions developments based on environmental considerations.

The administration officials want legislation to make MEPA "procedural," meaning that environmental impact statements would merely be inventories of environmental problems and not a basis on which to accept or reject projects.

At a meeting last week, directors of the departments of Natural Resources, State Lands, Health, Agriculture and Fish, Wildlife and Parks met with EQC staff and requested that a bill be drafted to narrow MEPA's scope.

The meeting was one of a series the EQC staff has held with leaders of environmental and industry groups and state agencies to determine what legislative action those groups favor on MEPA.

The meat of the issue is the debate over whether the act should be procedural or substantive.

EQC director Deborah Schmidt said only state agency heads feel legislation is necessary to change the act. Both environmentalists and industry want to maintain the status quo, she said.

Schmidt added, however, that other less-significant changes may be made in MEPA.

John North, the governor's attorney and his representative on the council, said the state department heads feel MEPA standards are not specific enough to guide agencies in making decisions on developments.

North said MEPA should be procedural because state agencies have other authority to grant or deny development permits. He added that environmental considerations should be part of the permitting process each agency uses and not come from MEPA.

Gov. Ted Schwinden has said he doesn't think MEPA should be substantive. At one point Schwinden said that if Judge Bennett's ruling stands "it will lead to a legislative rearrangement of MEPA, and I'll be part of it."

Bennett's decision came in a lawsuit brought by the Cabinet Resource Group and the Montana Wilderness Association, which are opposed to a planned mine in the Troy area. They contended the State Lands Department incorrectly ignored aspects of MEPA while going through the permitting process, and limited its review to a narrow range of issues spelled out in the Metal Mine Reclamation Act.

EXHIBIT 5
2-11-83

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The Independent Record, Helena, Mont., Thursday, Feb. 11, 1982

Judge broadens environmental law

By GARRY J. MOES
Associated Press Writer

Montana's Environmental Quality Council has discussed the implications of the new teeth put in the state's major environmental policy law.

State District Judge Gordon Bennett ruled Jan. 25 that the Montana Environmental Policy Act (MEPA) gives decision-making powers to state government agencies that issue permits for industrial or other major activities effecting the environment.

The landmark ruling means state agencies must consider the findings of environmental impact statements when deciding whether to issue or deny permits.

The ruling, which was discussed Wednesday during a meeting of the Legislature's EQC, was handed down in answer to a motion during preliminary stages of a major lawsuit brought by two environmental groups. The Montana Wilderness Association and the Cabinet Resource Group are trying to force tighter environmental protection restrictions upon development of an underground mine proposed by Asarco Inc. in the Cabinet Mountains 15 miles south of Troy in northwestern Montana.

Bennett ruled that the Department of State Lands, which granted Asarco a permit for the mine in November 1979, was required to consider the broad environmental protection requirements of the Montana Environmental Policy Act in addition to the narrower requirements of the Hard Rock Mining Act.

The Department of State Lands contended it could issue the permit on the basis of a determination that the mining plan complied with the safeguards of the Hard Rock Mining Act. The agency argued it was not required to use the joint federal-state environmental impact statement prepared for the project in reaching a decision on the permit.

While Bennett ruled as a matter of law that MEPA must be considered, he said it is not clear what process the department used in reaching its decision to grant the permit and that still must be decided in a future trial of the case.

John North, an attorney for the department, said that while the law has been clarified, it still must be determined whether DSL has complied with the law under the facts of the Asarco mine case.

Bennett's ruling runs contrary to much popular belief concerning the substantive character of the state's basic environmental policy law.

Bennett considered a Supreme Court ruling in his Jan. 25 decision on the Asarco mine, but he said the facts of that case could be distinguished from the facts in the Asarco case.

Bennett said the Supreme Court in the Beaver Creek South decision had ruled only that MEPA could not extend state control over subdivisions beyond matters of water supply, sewage and solid waste because to do so would conflict with the right of local government control as expressed in the Subdivision and Platting Act.

"The local government was not, of course, bound by MEPA, thus the impact of MEPA on subdividing in this state was virtually nullified, even though state agencies are involved and specifically required to apply MEPA policies, goals and procedures," Bennett said.

"But in this case, there is no conflicting statute. MEPA must be applied, and if properly applied, undoubtedly binds DSL to consideration of environmental factors beyond those specified in the HRMA (Hard Rock Mining Act)."

Under the HRMA, a permit may be denied if the plan of development, mining or reclamation is not in compliance with the state air and water quality standards or if reclamation could not be accomplished.

Bennett said MEPA, however, includes much broader environmental considerations — including anything that has an impact on the environment, be it a social, cultural, historic, aesthetic, economic, natural, health or welfare factor.

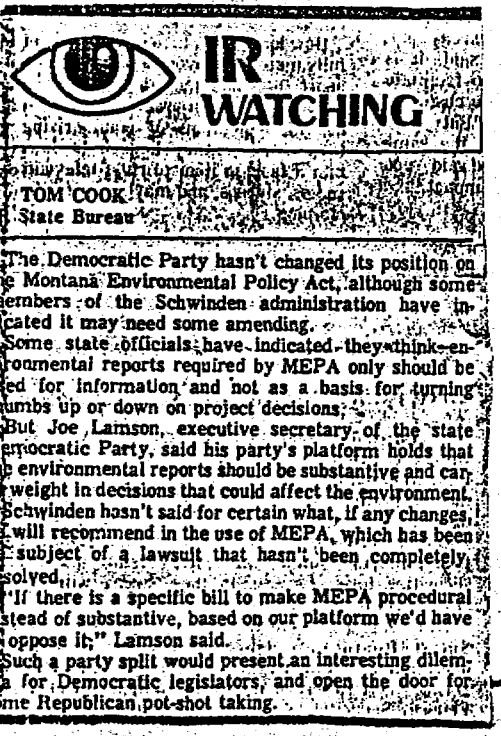
Bennett also said MEPA makes it abundantly plain that its mandates are "supplemental" to any other laws governing the actions of state agencies, boards or commissions.

Meanwhile, a staff researcher for the Legislature's Environmental Quality Council, John Carter, agreed in a report Wednesday that the Beaver Creek South decision of the Supreme Court was narrower than many have believed and MEPA may not be as toothless as thought.

"A more expansive interpretation of that decision may not only be erroneous but harmful and misleading to agencies as they proceed in implementing the act," he said, adding that many people, including some in state government, have broadly interpreted the Supreme Court ruling as gutting MEPA.

The Carter report was prepared for the EQC as background for a discussion on whether the environmental watchdog panel should give new guidance or seek legislation to help agencies determine whether MEPA is merely a goal-oriented, procedural document or a substantive law which must be applied to decisions.

North cautioned the EQC about treading too deeply into an area pending before a court.



IR WATCHING

By TOM COOK
IR State Bureau

The Democratic Party hasn't changed its position on the Montana Environmental Policy Act, although some members of the Schwinden administration have indicated it may need some amending.

Some state officials have indicated they think environmental reports required by MEPA only should be used for information and not as a basis for turning thumbs up or down on project decisions.

But Joe Lamson, executive secretary of the state Democratic Party, said his party's platform holds that the environmental reports should be substantive and carry weight in decisions that could affect the environment.

Schwinden hasn't said for certain what, if any changes, he will recommend in the use of MEPA, which has been the subject of a lawsuit that hasn't been completely resolved.

"If there is a specific bill to make MEPA procedural instead of substantive, based on our platform we'd have to oppose it," Lamson said.

Such a party split would present an interesting dilemma for Democratic legislators, and open the door for some Republican pot-shot taking.

Independent Record, Helena, Mont., Sunday, January 2, 1983

Independent Record, Helena, Mont., Thursday, September 30, 1982

MEPA has muscle

Bennett's ruling might stir weakening effort

By SALLY HILANDER
IR Staff Writer

Helena District Judge Gordon Bennett has ruled that state agencies have authority — and obligation — to reject development applications if the proposed mine or other project is determined to be unduly damaging to the environment.

Ironically, the Wednesday ruling that should be seen as a victory for environmental protection, may lead to a legislative attempt to weaken the Montana Environmental Policy Act.

Bennett's ruling came down in a 1979 case brought against Asarco and the state by Cabinet Resource Group and the Montana Wilderness Association, conservation groups opposed to a proposed mine in the Troy area of northwestern Montana.

Their concern is that the area in question is thought to be one of the last remaining grizzly bear ecosystems in the continental United State.

The lawsuit contends the Department of State Lands did not enforce aspects of the Montana Environmental Policy Act (MEPA), but instead limited its permit review to the much narrower range of issues contained in the Metal Mine Reclamation Act, the former "Hard Rock Law."

Bennett's new ruling — only a partial decision in the complex case and sure to be appealed — reaffirms his January ruling that MEPA is substantive, giving state agencies authority to condition, reject or deny a development permit based on environmental considerations.

The state argues that MEPA is procedural only, giving guidelines for state reviews, but is not to be a major factor in agency decisions. Gov. Ted Schwinden in March promised a "legislative re-arrangement of MEPA" if Bennett's ruling stands.

"The Montana Legislature never intended for MEPA to broaden state agencies' permitting powers," a St Lands attorney, John North, argued in his request t Bennett reconsider his January ruling.

North characterized the Metal Mine Reclamation as a series of "compromises" between the environm tal community and the mining industry.

State Lands contends that it was without authority deny a mining permit so long as the applicant, in t case Asarco, meets the requirements of the reclamat act. Bennett disagrees. The law says the state may gr a permit if the requirements are met, but it doesn't sa must.

The state argues that environmental impact statem (EIS) that MEPA requires for major projects, designed only to disclose possible environmen problems. But Bennett said the EIS is more than tha an important decision-making tool.

He cites extensive federal case law interpreting National Environmental Policy Act, after which ME was patterned, to back his opinion.

"It is not sufficient for the agency to note the prese of adverse environmental factors while deny authority to do anything about them," Bennett s

Montanans gave "a heightend importance to act which affect the environment" when they adopted state constitution, Bennett said.

The U.S. Constitution has no similar guarantee o clean and healthful environment as an unalien right." The Montana Constitution has three referenc environmental quality.

Wednesday's ruling denies Asarco's and State L motions for summary judgment on the issues of whe state misinterpreted the effect of MEPA on its func

The primary issue that prompted the lawsui whether or not the state inadequately reviewed Cabinet Mountains mining applications before it gra the permit — is yet to be decided.

Independent Record, Helena, Mont., Tuesday, March 23, 1982

State takes run at MEPA ruling

By SALLY HILANDER
IR Staff Writer

The Department of State Lands has asked reconsideration of a recent court opinion that Montana's Environmental Policy Act (MEPA) requires the agency to consider environmental issues beyond those in the Metal Mine Reclamation Act when it considers mining permits.

Helena District Judge Gordon Bennett's Jan. 25 ruling is disputed in state government because it says MEPA grants regulatory authority. The state sees the act only as procedural — promoting and encouraging sound environmental practices.

But Bennett ruled that MEPA "binds State Lands to consideration of environmental factors beyond those specified" in the Metal Mine Reclamation Act.

If that interpretation stands, "it will lead to a legislative re-arrangement of MEPA and I'll be part of it," Gov. Ted Schwinden said in a recent interview with IR State Bureau Reporter Jim Robbins.

The ruling has broad implications for the state's future permitting actions because MEPA contains environmental protection provisions far more stringent than those of the Metal Mine Reclamation Act and other state laws.

In his request for reconsideration filed today, State Lands attorney John F. North argues that the Montana Legislature never intended for MEPA to broaden state agencies' permitting powers.

The Metal Mine Reclamation Act (formerly Hard Rock Law) is a series of "compromises" between the environmental community and the mining industry, North said.

"These comprises would have been meaningless acts if the legislators had already given State Lands comprehensive powers in MEPA," the attorney said.

Bennett's ruling came in a 1979 lawsuit brought by the Cabinet Resource Group and the Montana Wilderness Association, contending State Lands did not enforce mitigating provisions of MEPA when it granted Asarco Inc. a mining permit in the Cabinet Mountains.

The plaintiffs — concerned in part because the area in northwestern Montana is one of the last remaining grizzly bear habitats in the continental U.S. — say State Lands wrongfully limited its mine permit review to the narrower range of environmental issues in the Metal Mine Reclamation Act.

Bennett granted partial summary judgement in favor of Cabinet Resource Group and MWA. He has not yet ruled on whether or not State Lands incorrectly reviewed Asarco's hard-rock application and granted the mining permit.

North asks the judge to re-think his position and either clarify his Jan. 25 opinion or reconsider the order.

He also asks the judge to dismiss the first two counts of the complaint — which allege that State Lands misinterpreted the effect of MEPA on its function under the Metal Mine Reclamation Act, and relied on that incorrect interpretation when it granted the permit.

Independent Record, Helena, Mont., Thursday, March 18, 82

Environmental Policy Act 'just procedural,' Schwinden claims

By JIM ROBBINS
IR State Bureau

The Montana Environmental Policy Act is not a substantive law and never will be, Gov. Ted Schwinden said Wednesday.

The governor was responding to a question about a recent ruling by District Court Judge Gordon Bennett that held that MEPA is not merely procedural, but requires environmental factors to be considered when deciding whether a permit should be granted.

Schwinden disagrees and maintains the law is only to define the scope of a project and not to be a major factor in agency decisions.

"MEPA is not, was not and cannot be substantive in the sense it overrides other kinds of agency responsibilities," Schwinden said in an interview. "If it is (construed that way) it will lead to a legislative rearrangement of MEPA and I'll be part of it."

Bennett's decision was rendered in a lawsuit brought by the Cabinet Resource Group and the Montana Wilderness Association. The suit maintained the Department of State Lands, in granting a permit to ASARCO to mine in the Cabinet Mountains, did not enforce mitigating aspects of MEPA. Instead, the groups claimed, State Lands limited its review to a narrower range of issues contained in the Metal Mine Reclamation Act.

The area is of particular concern to environmentalists because it is one of the last remaining grizzly bear ecosystems in the continental United States.

The decision is expected to be appealed.

P.6
2-11-83

SB 430 (action cont.)
Senator Halligan then moved that SB 430 Do Pass as Amended, there was no further discussion, vote was called, all voted 'aye' and motion carried.

ACTION ON SENATE BILL 416: Senator VanValkenburg moved that SB 416 be amended with the Department of state lands proposed amendments, page 2, line 17, following "of" insert: "railroad spurs or loops". Vote was called on amendment, all voted 'aye' and motion carried. Senator Van Valkenburg moved that SB 416 Do Pass as amended. He stated he believed the people should be protected, they have found a problem in dealing with the ICC on railroad lines, and this bill determines how they go through. It is important that the state be able to have some control on what happens within our boundaries. Senator Manning said the bill is reasonable, that he has had experience where there were three railroad crossings put where the school bus has to go through, and this should have been considered. They since have had to put up crossing arms, but this all could have been prevented. Senator Keating inquired if this would become part of a project and that a project gets a permit before it could go through? Mr. Wilson stated he didn't believe the ICC would relinquish their jurisdiction. The Dept. of State Lands would have an additional opportunity to speak, however. Vote was called, a majority voted 'aye' Senators Dover and Keating voted 'no', motion carried. (This bill was later reconsidered.)

ACTION ON SENATE BILL 406: Senator Van Valkenburg moved that SB 406 Do Not Pass due to not having enough information. There was discussion as to what is considered by local agencies on subdivisions, whether it was just water and sewer and if the EIS should be done. It was pointed out that the quality of assessments received from developers varies, as well as actions of planning boards. Senator Van Valkenburg withdrew his motion, Senator Lee moved to Pass Consideration, vote was called and all voted "aye". Motion carried. (This bill was later reconsidered.)

ACTION ON SENATE BILL 368: Senator Lee offered amendment to the bill, page 1, line 16-19, strike "subsection (2) in its entirety" and insert "however, nothing in this chapter creates or expands decisionmaking authority granted by or referred to in subsection (1), and to amend the title. Vote was called on the motion, all voted "aye" and motion carried. Senator Lee moved the bill as amended Do Pass. Senators discussed the bill, Senator Van Valkenburg stated there is the resolution proposed to study this matter, it is already considered procedural and the bill shouldn't be rewritten until after it is determined what the Supreme Court is going to do. It should be taken care of in court. Senator Story agreed it may be well to leave it as it is. Senator Mohar agreed that it is now considered procedural by the Governor and administration and will probably continue that way.

SB 368 (cont.)
Senator Lee stated this bill would not affect those cases that are in court. Request was made to have legal council refine the amendment. Vote was called on the motion that SB 368 Do Pass as Amended, roll was taken, vote was 7-4 and motion carried.

ACTION ON SENATE BILL 396: Amendments were proposed to the bill, title, line 9, following "76-6-203" strike "76-6-206", page 4, line 25 and line 1 on page 5, following "areas" strike "within the floodplain of or"; page 5, lines 4-6, following "species" strike remainder of lines 4-6, insert '.'; page 6, line 22 through line 16 on page 7, following line 21, strike section 4 in its entirety; renumber subsequent sections. There was short discussion, vote was called on Motion of Senator Eck to amend SB 396, motion carried. There was further discussion, Senator Eck moved to pass Consideration of SB 396, vote was called, all voted 'aye' and motion carried. Senator Lee voted no.

ACTION ON SENATE BILL 416: Senator Etchart moved that SB 416 be reconsidered, vote was called, a majority voted 'aye', Senator Mohar voted 'no', motion carried.

ACTION ON SENATE BILL 362: Senator Etchart moved that this bill be tabled, that he had put a lot of work into it, but felt the amendments needed to be made and worked out. There was discussion by the committee, members agreed to look further into the amendments and Senator Etchart withdrew the motion.

SENATE BILL 444: Chairman Dover opened hearing on SB 444, calling on Senator Reed Marbut, Missoula. Senator Marbut stated this bill is to clear up very old easements for utility lines that were given without any definition of exactly where they are to be located. This would allow for surveys to be made and the property identified showing clearly which are and are not being used. There were no other proponents.

OPPONENTS: John Alke, Montana Dakota Utilities spoke in opposition. As the bill is written, easements could be cut back to only the area where the utility is located, that the 15 or 20 foot easements are needed to allow trucks to go into the areas for work. He recommended a do not pass. There were no other opponents.

Senator Eck inquired further as to what area Senator Marbut was talking about, Senator Marbut stated on old easements there was no definition. His intent is to erase from titles the things not needed and not utilized by utilities, and to define those old easements. Senator Story said some of the easements on his property for utilities could not even be reached by a truck, but they need easement to cut across other property to reach the lines. Senator Keating inquired

ROLL CALL

SENATE NATURAL RESOURCES COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date 2-18

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (D)	✓		
HALLIGAN, Mike (D)	✓		
KEATING, Thomas F. (R)	✓	Late	
LEE, Gary P. (R)	✓		
MANNING, Dave (D)	✓		
MOHAR, John (D)	✓		
SHAW, James N. (R)	✓		
STORY, Pete (R)	✓		
TVEIT, Larry J. (R)	✓		
VAN VALKENBURG, Fred (D)	✓		
ETCHART, Mark (R) Vice Chairman	✓		
DOVER, Harold L. (R) Chairman	✓		

STANDING COMMITTEE REPORT

February 18, 19 83

MR. PRESIDENT:

We, your committee on NATURAL RESOURCES

having had under consideration SENATE Bill No. 368

Respectfully report as follows: That SENATE Bill No. 368,
introduced bill, be amended as follows:

1. Title, line 6.
   Following: "AUTHORITY"
   Strike: "OR CREATE ANY RIGHT OF ACTION BEYOND ONE TO REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT"

2. Page 1, line 16.
   Following: "chapter"
   Strike: "creates any right of action beyond one to require an environmental impact statement or"

And, as so amended,
DO PASS

HAROLD C. DOVER, Chairman.

STATE PUB. CO.
Helena, Mont.

H.C.

SENATE COMMITTEE SENATE NATURAL RESOURCES

Date 2-18 Bill No. 368 Time 1:50

NAME	YES	NO
ECK, Dorothy (D)		✓
HALLIGAN, Mike (D)		✓
KEATING, Thomas F. (R)	✓	
LEE, Gary P. (R)	✓	
MANNING, Dave (D)	✓	
MOHAR, John (D)		✓
SHAW, James N. (R)	✓	
STORY, Pete (R)	✓	
TVEIT, Larry J. (R)	✓	
VAN VALKENBURG, Fred (D)		✓
ETCHART, Mark (R) Vice Chairman		
DOVER, Harold L. (R) Chairman	✓	

Secretary
Patricia A. Hatfield

Chairman
Harold L. Dover

Motion: Do Pass as Amended.

(include enough information on motion--put with yellow copy of committee report.)

PROPOSED AMENDMENTS TO SB 368

1. Title, line 6.
   Following: "AUTHORITY"
   Strike: "OR CREATE ANY RIGHT OF ACTION BEYOND ONE TO REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT"

2. Page 1, line 16.
   Following: "chapter"
   Strike: "creates any right of action beyond one to require an environmental impact statement or"